



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2003

Chief Don Hatcher
City of Leander
P.O. Box 319
Leander, Texas 78646-0319

OR2003-5658

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185884.

The Leander Police Department (the "department") received a written request for all police records pertaining to two named individuals during a specified time period. You contend that the requested information is excepted from required disclosure pursuant to sections 552.101 and 552.130 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* that is of no legitimate concern to the public. *Id.* at 683-85.

In this instance, the requestor, in essence, is asking the department to compile the criminal histories of the named individuals. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Open records decisions issued by this office also have acknowledged this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). Accordingly, in this instance, the department must withhold all police records

that list the named individuals as suspects or arrestees, to the extent those records exist, pursuant to section 552.101 of the Government Code.

Section 552.101 also excepts from required public disclosure information made confidential by statute. You contend that certain records you submitted to this office consisting of juvenile law-enforcement records are confidential under section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

- (1) kept separate from adult files and records; and
- (2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Subsection 58.007(d) authorizes the release of certain juvenile law-enforcement records to the Texas Youth Commission and the Texas Department of Criminal Justice, and thus is inapplicable here. *See also* Fam. Code § 58.007(e) (authorizing release of juvenile law-enforcement records to other juvenile justice agency or criminal justice agency). Section 58.007(c) does not grant the law-enforcement officials controlling juvenile records discretion as to who else may see them.¹ After reviewing the submitted records, we conclude that Report #300142 and all related attachments constitute law-enforcement records concerning delinquent conduct for purposes of section 58.007(c). Because section 58.007(c) does not authorize the release of the juvenile law-enforcement records in this instance, we conclude that the department must withhold Report #300142 and its attachments in their entirety pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 181 (1977).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.*

¹This is in contrast to section 58.007(b) of the Family Code, which allows "with leave of the juvenile court" inspection of juvenile court records by any person "with a legitimate interest." *See* Fam. Code § 58.007(b).

§ 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

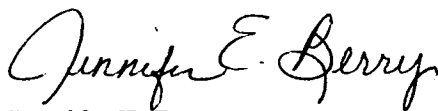
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/RWP/seg

Ref: ID# 185884

Enc: Submitted documents

c: Mr. Macedonio Marroquin
200 Woods Lane
Cedar Park, Texas 78613
(w/o enclosures)